IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8459 OF 2005

Shri Siddharam G. Patil & Ors. .. Petitioners

Vs.

Shri Appasaheb G. Patil & ors. .. Respondents

Mr. Pankaj Das for petitioners.
Mr. Sachin Dhakephalkar for respondent nos.1 and 2.

CORAM: B.H. MARLAPALLE, J.

Date : June 27, 2006.

P.C.:

1. Heard Mr. Das the learned counsel for the petitioners and Mr. Dhakephalkar the learned counsel for respondent nos.1 and 2.

2. In Regular Civil Suit No.1341 of 1999 an application came to be filed at Exh.65 praying for recall of the no W.S. order and allowing the W.S. to be filed and taken on record. The said application has been rejected by the impugned order dated 28/9/2005.

3. The learned Judge of the trial court noted that on receipt of the notice in the civil suit the

defendants had appeared and till 4/3/2005 had failed to file the W.S. i.e. for almost more than five years and in the application submitted at Exh.65 the only reason given was that the defendants were not in touch with their advocate. Under these circumstances the trial court referred to the decision in the case of Kailash vs. Nanhku (AIR 2005 SC 2441) and noted that the defendants failed to make out any case of exceptional reasons which were beyond the control of the defendants, as a result of which they could not file the W.S. in time, rather than presenting the same on 4/3/2005. The rejection of the said application, therefore, in such circumstances cannot be termed as perverse or grossly erroneous so as to call for interference in a writ petition under Article 227 of the Constitution.

4. Hence, the petition is rejected summarily.

(B.H. Marlapalle,J.)